



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

Amended May 11, 2016

MICHIGAN COURT FORMS COMMITTEE
Criminal Work Group
Minutes of March 3, 2016 Meeting

Present: David Gilbert, Calhoun County Prosecutor's Office
Kathryn Griffin, 45th Circuit Court
Hon. Scott Hill-Kennedy, 49th Circuit Court
Jacqueline McCann, State Appellate Defender Office
Takura Nyamfukudza, Alane and Chartier, PLC
Tracy Smith, Ingham County Clerk's Office
Jessica Testolin, 73-B District Court
Jay Francisco, Judicial Information Systems (Staff)
Amy Garoushi, Trial Court Services (Staff)
Bobbi Morrow, Trial Court Services (Staff)
Michele Muscat, Trial Court Services (Staff)
Matthew Walker, Trial Court Services (Staff)
Stacy Westra, Trial Court Services (Staff)

Absent: David Baxter, 3rd Circuit Court
Hon. Gary C. Giguere, 9th Circuit Court
Donna Lowe, 82nd District Court
Elaine Richardson, 28th Circuit Court
Melissa Brand-Orweller, Judicial Information Systems (Staff)
Jim Inloes, Trial Court Services (Staff)

Meeting called to order, 9:45 a.m.

1. **Minor Changes**

**A. MC 246, Motion and Summons Regarding Probation Violation
MC 256, Summons, Criminal**

The committee discussed the SCAO's suggestion to add the standard ADA/LEP language to forms MC 246 and MC 256. Members agreed with the suggestion and added "If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements" beneath the date and judge's signature lines in the summons section of MC 246.

On MC 256, the committee replaced the current language, "If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements" with the standard language referenced above.

The committee briefly discussed modifying the language to state "...please contact the court's ADA coordinator to make arrangements," to clarify who should be contacted. However, this language was not adopted as the accommodations language applies to LEP situations as well, and the LEP coordinator may not be the same as the ADA coordinator.

The committee approved the revised forms.

**B. MC 406a, Petition to Discontinue Sex Offender Registration
MC 406b, Order on Petition to Discontinue Sex Offender Registration**

The committee reviewed the SCAO's suggestion to remove the website links to the Self-Help Center in the instructions for MC 406a because the web pages referenced are no longer available. Members agreed with the suggestion and deleted the web address on page 2 in two places: item 1 of the petition checklist and the last paragraph. The checklist was renumbered accordingly, and the language in the last paragraph was revised to state, "If you have questions about any steps in the process, refer to pages 3 through 8 of this booklet for details. You may wish to consult an attorney."

The committee also removed the web address on page 9 of the instructions and revised the last paragraph to state, "You must read this booklet for directions on the legal process."

Staff pointed out that MC 406a should probably contain the standard ADA/LEP language in the notice of hearing section. Members agreed and made the change.

MC 406a was approved as revised.
MC 406b was not changed.

STAFF NOTE: In order to incorporate the standard ADA/LEP language to MC 406a, staff left aligned the “Notice of Hearing” subheader. The standard ADA/LEP language was then added in line with the “Notice of Hearing” subheader. In addition, the “Certificate of Mailing” subheader was left aligned for consistency.

C. DC 255, Notice to Prosecuting Official (Victim’s Rights Act)

The committee reviewed the suggestion to update the list of serious misdemeanors to comply with 2014 PA 130. Accordingly, the committee deleted the option associated with MCL 750.145a and added the following options:

- ☐ Contributing to the neglect or delinquency of a minor (MCL 750.145)
- ☐ Using the internet or a computer to make a prohibited communication (MCL 750.145d)
- ☐ Intentionally aiming a firearm without malice (MCL 750.233)
- ☐ Injuring a worker in a work zone (MCL 257.601b)

Members pointed out that the reference to MCL 750.135b for child abuse in the fourth degree was incorrect and changed it to MCL 750.136b. Additionally, members corrected the acronym “OWVI” to “OVWI” as it stands for operating a vessel under the influence.

The form was approved as revised.

D. DC 225, Complaint, Misdemeanor
DC 226, Warrant, Misdemeanor, Traffic/Nontraffic
MC 200, Felony Set, Information
MC 240, Order for Pretrial Release/Custody
MC 256, Summons, Criminal

The committee discussed the SCAO’s suggestion to remove references to the court seal on forms DC 225, DC 226, MC 200, MC 240, and MC 256 because there is no statutory or court rule requirement to apply the court seal to these documents. Members agreed and removed the language “(SEAL)” from DC 225 (Warrant), DC 226, MC 200 (Warrant), and the sheriff/facility copy of MC 240 and removed “This document must be sealed by the seal of the court” from MC 256.

The forms were approved as revised.

E. MC 219, Judgment of Sentence/Commitment to Jail
CC 219b, Judgment of Sentence/Commitment to Department of Corrections

The committee discussed the SCAO’s suggestion to replace the reference to the concealed weapon board with county clerk in accordance with 2015 PA 3. Members agreed and replaced “concealed weapon board” with “county clerk” in item 15 of MC 219 and in item 11 of CC 219b.

Members pointed out that the fifth copy for the gun board was incorrect. The committee discussed whether it should be replaced with reference to the county clerk but concluded that it should be deleted altogether because the county clerk would obtain any necessary information regarding suspension or revocation from the Michigan State Police (MSP) criminal history reporting database.

The forms were approved as revised.

STAFF NOTE: After the meeting, staff discovered that item 12 of MC 294 mirrored the language found in CC 219b and MC 219. Therefore, MC 294 was modified. Also, subsequent to the work group meeting, staff inquired with MSP as to how county clerks are notified that a concealed pistol license (CPL) should be suspended or revoked. MSP responded:

When individuals are fingerprinted for a concealed pistol license, their applicant prints are saved and an electronic comparison is completed when prints are received for a criminal offense. When criminal prints are received or an arrest is updated with conviction data, the criminal history system notifies the CPL system. MSP determines whether it would deem the CPL holder ineligible for a license and if so, notifies the county clerk via the CPL system. MSP is also notified automatically when there is a personal protection order entered against a CPL holder and, in turn, notifies the county clerk via the CPL system. Once the clerk is notified, they should change the status to suspended or revoked, as appropriate. If the law states a length of suspension related to the violation, the system will automatically calculate the suspension end date.

Based on this information, SCAO believes it is no longer necessary for courts to order suspension or revocation of a CPL because the suspension or revocation happens as a matter of law. Item 11 of CC 219b, item 15 of MC 219, and item 12 of MC 294 have been removed and all subsequent items were renumbered.

F. CC 404, Notice to Prisoner on Application for Leave to Appeal Decision of Parole Board

The committee discussed the SCAO's suggestion to update the court rule citations and to remove the second sentence in the "Note" at the top of form CC 404. After discussing the requirements of MCR 7.118(D)(3)(b) and referring to the court rules, the committee agreed that the citations should be changed and that the second sentence in the note should be deleted. Members replaced MCR 7.105(G) with MCR 7.118(F) in item 3. The committee removed the language in the note "[i]f the appropriate language is included in the application for leave to appeal, this form does not need to be used" because the committee interpreted the court rule to require the use of this form even if the application for leave to appeal contained the notice language.

The committee also replaced MCL 791.234(11) and MCR 7.104(D)(2) with MCL 791.234(9) and MCR 7.118(D)(3) in the footer.

The form was approved as revised.

G. MC 222, Request for Court-Appointed Attorney and Order

The committee discussed the SCAO's suggestion to remove the "District Court Endorsement" box in the bottom left-hand corner of the form. Staff indicated that it appears the box is no longer necessary. Members were not aware of any necessity for it and removed the box.

The form was approved as revised.

STAFF NOTE: During typesetting, additional changes were made for grammar, style, and the application of standards.

2. DC 225, Complaint and Warrant, Misdemeanor DC 226, Warrant, Misdemeanor, Traffic/Nontraffic

The committee discussed the suggestions to replace the reference to cash bond on these forms. The committee reviewed MCL 780.581 and MCR 6.102(F) and agreed that the language on the forms should use accurate terminology. Members briefly considered using the term "interim bail" and eliminating the word "cash." However, after discussion, the committee agreed that use of the word "cash" was for clarity—bail cannot be paid with a credit card or check.

On the warrant page of DC 225, the committee changed the language of item c from "The defendant may be released when a cash bond is posted in the amount of..." to "The defendant may be released when interim cash bail is posted in the amount of" Members also added MCL 780.581 and MCR 6.102(F) to the form footer.

The committee changed the language of DC 226 from "...or defendant may be released when a cash interim bond is posted..." to "...or defendant may be released when interim cash bail is posted..." Members also added citations to MCL 780.581 and MCR 6.102(F) to the form footer.

The forms were approved as revised.

STAFF NOTE: During typesetting, additional changes were made for grammar, style, and the application of standards.

3. DC 225, Complaint and Warrant, Misdemeanor MC 200, Felony Set MC 256, Summons, Criminal

The committee discussed the suggestion to add to forms DC 225, MC 200, and MC 256 a parenthetical in the field for "Codefendants" that states "(if known)." The requester

indicated that without this parenthetical some courts expect the field to be completed. The phrase “if known” will make it clear that the field is completed only when the prosecutor knows who the codefendants are.

Members remarked that the field for codefendants was very useful and should continue to be used. The committee agreed that the parenthetical would be helpful and added, “(if known)” to each codefendant field on forms DC 225, MC 200, and MC 256.

The forms were approved as revised.

4. MC 204, Order for Competency Examination

The committee was informed that MC 206, Order for Evaluation Relative to Criminal Responsibility, was inadvertently published for comment and that MC 204, Order for Competency Examination, was intended to be published. A copy of MC 204 was provided in place of MC 206.

The committee discussed the suggestion that a new item (proposed item 6) be added to this form. The new item would allow additional orders to be entered by the court as deemed necessary.

The committee discussed what else a court might order in this particular order. Some members remarked that the extra item would allow for case-specific orders, such as requiring a defendant to take all medication pending the competency examination. The committee considered several phrases for the item and settled on “Other” instead of “Additional Orders.”

The form was approved as revised.

5. MC 219, Judgment of Sentence/Commitment to Jail

The committee discussed the suggestion to remove the following line from item 11 of this form: “☐ Defendant shall serve _____ days in jail beginning _____ for failure to pay on time.”

The committee was split on whether to remove this item. Some members remarked that this line is in conflict with “ability to pay” initiatives that courts must consider. Under ability to pay criteria, courts need to determine that defendants can pay their fines before jailing for nonpayment. Some members argued that this line on the form orders the defendant to be jailed for a future contempt without that determination being made. But other members pointed out that district court judges often use this line for many reasons.

Because consensus could not be reached, staff suggested referring the question to the TCS Collections Analyst for her recommendation. The committee agreed with this suggestion.

STAFF NOTE: After consulting with the TCS Collections Analyst and reviewing MCL 769.3, the source of the language in question, SCAO staff opted to leave the option on the form but revised the language for accuracy and clarity as follows: “The defendant shall serve ____ days in jail for failure to pay on time, as part of a conditional sentence. Prior to enforcement of jail time for failing to pay, the court must determine the defendant’s ability to pay.” The revised language accommodates conditional sentences, which are still permitted by MCL 769.3, while accurately conveying the court’s obligation to determine a defendant’s ability to pay before enforcing a sentence to jail for failing to pay. A citation to MCL 769.3 was added to the foot of the form. **This change was applied to both MC 219 and MC 294.**

6. **MC 220, Recall of Bench Warrant/Order to Apprehend**
MC 239, Removal of Entry from LEIN

The committee discussed the proposal to remove the instructions from MC 220 and reformat the order after MC 239 because the process is often automated and the form does not accurately reflect current practice. The committee agreed that the form should be revised.

The committee removed the “date of offense” field because it is not a necessary LEIN field and not needed for warrant removal.

Staff inquired whether the form needed an address box or a case entitlement in the masthead. Members discussed this and agreed that the “TO: Police agency and address” field should be replaced with a case entitlement because the form is rarely mailed. To identify who the document should be provided to, the committee added a line under the case entitlement stating, “TO: ☐ Court clerk ☐ Law enforcement agency _____.”

Members changed the language “Court call to police” to “Court contact to police” to reflect that the court does not always call the police—the contact may be by e-mail or fax.

The committee reformatted the “Certification of Removal” section to mirror the certification of removal from MC 239. The updated certification of removal has a subheader stating, “Certification of Removal” with the statement “I certify the LEIN entry in this case or matter has been removed from LEIN files.” The section includes date and signature lines.

The committee also removed the “police disposition” section from MC 220 and the included checkboxes. In addition, the committee removed the instructions section from the bottom of the page. The committee agreed the police disposition and instructions sections no longer applied to current practice.

The committee modified the title to state, “Recall of Bench Warrant/Order to Apprehend and Removal from LEIN.” Members agreed the updated title more accurately reflected

the form's purpose. The distribution list was also modified to remove the color indications from the copies as they are no longer needed.

Although not on the agenda or published for comment, the committee also modified MC 239 to reflect some of the changes made to MC 220. Members removed the "TO: Law enforcement agency and address" field for window envelopes for the same reasoning as

MC 220. The field was replaced with the case entitlement statement. Members then agreed to add a line under the case entitlement mirroring the update to MC 220 stating "TO: ☐ Court Clerk ☐ Law enforcement agency _____."

The committee approved the revised forms.

STAFF NOTE: During typesetting, the contact section of MC 200 was reorganized for context and clarity. An instruction was added to clarify the purpose and method of contact to police.

In addition, staff contacted the MSP to confirm the whether or not the "date of offense" field is needed MC 220. MSP advised that the "date of offense" field, along with the issue date, charge, and police report number are used by law enforcement as a reference. For this reason, the fields have been retained on the form.

MSP also stated that warrant/order to apprehend number is not used by law enforcement. It was removed for that reason.

The committee's suggestions to modify MC 239 are being held for review by other committees because MC 239 is used in criminal, probate, and mental health matters. The suggestions will be published for comment for further input.

7. MC 227, Application to Set Aside Conviction

The committee discussed the suggestion to remove www.michiganprosecutor.org from page 2, item 10 of the instructions. PACC/PAAM indicated they receive approximately one application packet a week because the link to the website appears on the instructions and applicants mistakenly send packets to PACC/PAAM instead of the correct prosecuting official for their cases. Staff also remarked that the website link provides applicants a user-friendly map with links to all county prosecutor websites.

Members agreed that a percentage of applicants are always likely to make a mistake in sending the application to the wrong address. However, the benefits of retaining the link in the instructions for all applicants outweigh the burden imposed. Therefore, the committee declined to remove the link to www.michiganprosecutor.org from the instructions.

The committee also discussed the instructions of MC 406a, which contains the same link. The committee declined to remove this link as well, for the same reasoning provided above.

The form was not changed.

STAFF NOTE: After further discussion with PACC/PAAM, the link in the instructions to the Michigan Prosecutor website was modified to take the user directly to the county prosecutor directory. Item 10 of the instructions now reads “Mail a copy of the application packet to the correct prosecuting official where the conviction occurred (county, city, or township) by first-class mail. See www.michiganprosecutor.org/about-us-menu/prosecutor-directory for the addresses of county prosecutors.”

8. MC 229, Motion, Affidavit, and Bench Warrant

The committee discussed the proposal to include the height, weight, hair color, and eye color of a respondent, if known. The committee agreed that this information should be

included in the bench warrant, if known, because it helps police confirm they are arresting the correct defendant.

The committee reviewed the formatting of both CC 376 and FOC 14. Members changed the formatting of the fields on MC 229 to mirror the formatting of FOC 14. However, members included an asterisk after race, sex, and date of birth and the note from CC 376 indicating as follows, “*These items **must** be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful.”

Members also discussed the driver’s license field listed in MC 229 and removed the field because driver’s license number is not a required LEIN field for warrant entry.

The form was approved as revised.

9. MC 240, Order for Pretrial Release/Custody

The committee discussed the proposal to include an item 3c checkbox to the form to allow courts to place conditions of custody on defendants as provided in the 2014 amendment of MCR 6.106(B).

The committee agreed that a new checkbox was needed but that it should be included as part of item 3a instead of 3c. The committee added a line underneath item 3a stating, “[] Conditions of defendant’s custody are: _____.”

The committee also discussed MCR 6.106(D)(2)(m), which specifies a court’s authority to order limited or prohibited contact with a named person while the defendant is in custody. The committee added the MCR 6.1016(D)(2)(m) language to item 3b as it is distinct from MCR 6.106(B)(5) provided for in item 3a.

The committee also discussed including a copy for the defendant in the distribution list. Some members remarked that the defendant must have notice of the custody conditions before the court can enforce those conditions. Other members argued that notice would

be given on the record, which is adequate for enforcement. Members ultimately agreed that the defendant should receive a copy of the order because the court speaks through its orders. The committee added to the distribution list for this purpose as follows: “4th copy – Defendant.”

The committee approved the revised form.

STAFF NOTE: Because of limited space to incorporate the committee’s suggested changes, staff separated the custody order from MC 240. The new custody order, MC 240b, is titled “Custody Order,” and MC 240 was retitled “Pretrial Release Order.”

As a result of the split, the “Bond Denied” checkbox was no longer necessary and was removed from both forms.

10. MC 263, Motion/Order of Nolle Prosequi

The committee discussed the proposal to remove or modify the language to the defendant at the bottom of the form. The language currently states, “**TO THE DEFENDANT:** Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.”

The committee agreed that this language is misleading as it implies that the defendant’s fingerprints will be removed automatically from the MSP system. MSP follows MCL 28.243(8), which states that fingerprints are destroyed if a defendant is found not guilty. Therefore, an order of nolle prosequi would not require destruction of fingerprints.

The committee adopted the modified language, stating “Your fingerprints and arrest card will be destroyed by the Michigan State Police if you have been found not guilty. They may also be destroyed after motion and order for destruction of fingerprints (forms MC 235 and MC 392).”

The committee approved the revised form.

STAFF NOTE: For additional interpretation of MCL 28.243(8), see *People v Benjamin*, 283 Mich App 526; 769 NW2d 748 (2009) and *McElroy v Michigan State Police Criminal Justice Information Center*, 274 Mich App 32; 731 NW2d 138 (2007).

**11. New Form: Motion for Destruction of DNA Profile and Sample
New Form: Order to Destroy DNA Profile and Sample**

The committee discussed the suggestion to create motion and order forms for the destruction of a defendant’s DNA profile and sample. The committee reviewed MCL 28.176(4) and remarked that the statute provides that prosecutors and law enforcement have the burden of requesting a DNA profile and sample be destroyed. Staff responded that while the statute provides this, it would be prudent to have forms allowing a defendant to request the destruction of his or her DNA profile and sample in case

prosecutors or law enforcement overlook it. The committee agreed with this reasoning.

On the draft motion to destroy DNA profile and sample, members removed the “Count/Crime/Charge Code” fields because DNA profiles and samples are linked to a specific person and not a crime. Therefore, a defendant need not enter the specific count, crime, or charge code. The committee modified the language of item 1 from “I, _____, state that on _____ ...” to “I, _____, was arrested and a DNA sample was taken from me, and ...”

Members discussed the checkbox option in item 1 stating, “[] I was arrested, a DNA sample was taken from me, but no charge was filed within the limitations period.” Members agreed that this option would only be checked if there was no criminal case. However, because there was no case, the defendant would need to file a civil case in order to have the issue properly before the court. Members discussed modifying the form to be a petition for this scenario, but staff pointed out that there is no current structure or court rule for a filing of this type—the filing could be a civil matter, but it is unclear which case code or filing fee would apply. Members deleted the checkbox option.

The committee discussed removing item two. However, members agreed that the movant should provide a basis of knowledge for filing the motion. Members changed the language to include, “To my knowledge...” at the beginning of item 2.

Staff pointed out that the standard accommodations language should be added to the notice of hearing section and members added the standard accommodation language.

On the draft order to destroy DNA profile and sample, the committee removed the “Count/Crime/Charge Code” fields because DNA profiles and samples are linked to a specific person and not a crime. The committee modified the language of item 3 by removing references to MCL 28.176 per SCAO forms standards.

Members discussed that MCL 28.176(17) requires MSP to send written notice to requesting law enforcement, courts, or prosecutors when an individual's DNA sample or profile has been destroyed. Members agreed that it would not be prudent to order MSP to send a certification outside of their statutory burden. In item 3, the committee modified the checkbox stating, "[] immediately destroy the DNA profile and sample of the defendant/juvenile and provide certification of that fact to the defendant/juvenile," to "[] immediately destroy the DNA profile and sample the defendant/juvenile and provide certification of that fact to the court."

The committee approved the revised forms.

12. Modification of “Fingerprints” to “Biometric Data”

The committee discussed the proposal to replace the reference to “fingerprints” in all SCAO-approved forms to “biometric data” in accordance with 2012 PA 374. The

committee indicated this change was unnecessary as biometric data is broader than fingerprints and the court is only concerned with fingerprints.

13. New Form: Certificate Regarding Forensic Report

Staff conducted further background research on this form after publication of the agenda. Staff discovered that this suggestion arose from a draft version of MCR 6.202 that originally required a form. The draft version of the rule was not adopted and the form was no longer included in the rule. Staff suggested that the request for this form be

dropped. The committee agreed the form was not needed and the form was not developed.

Respectfully submitted,

Matthew L. Walker